

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARILYN EVE KLEINER
950 N. Kings Road, Apt. #235
Los Angeles, CA 90069

Registered Nurse License No. **299493**

Respondent

Case No. 2012-585

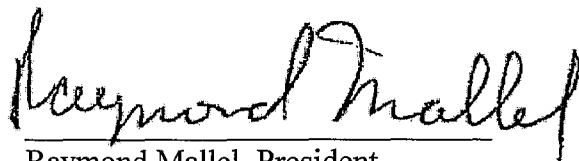
OAH No. 2012060176

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **January 16, 2013.**

IT IS SO ORDERED **December 17, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
Deputy Attorney General
4 State Bar No. 274129
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2562
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2012-585

11 **MARILYN EVE KLEINER**

OAH No. 2012060176

12 950 N. Kings Road, Apt. #235
13 Los Angeles, CA 90069

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Registered Nurse License No. 299493

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Executive Officer of the Board
21 of Registered Nursing. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Zachary T.
23 Fanselow, Deputy Attorney General.

24 2. Respondent Marilyn Eve Kleiner is represented in this proceeding by attorney Carêy
25 Caruso, whose address is: 425 South Beverly Drive, Beverly Hills, CA 90212-4401.

26 3. On or about January 31, 1979, the Board of Registered Nursing issued Registered
27 Nurse License No. 299493 to Marilyn Eve Kleiner ("Respondent"). The Registered Nurse
28

1 License was in full force and effect at all times relevant to the charges brought in Accusation No.
2 2012-585 and will expire on November 30, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-585 was filed before the Board of Registered Nursing
5 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 April 2, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-585 is attached as exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2012-585. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 2012-585.

27 10. Respondent agrees that her Registered Nurse License is subject to discipline and she
28 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

24
25
26
27
28

28 **Severability Clause.** Each condition of probation contained herein is a separate and

1 distinct condition. If any condition of this Order, or any application thereof, is declared
2 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
3 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
4 and enforceable to the fullest extent permitted by law.

5 **1. Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
6 detailed account of any and all violations of law shall be reported by Respondent to the Board in
7 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
8 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
9 45 days of the effective date of the decision, unless previously submitted as part of the licensure
10 application process.

11 **Criminal Court Orders:** If Respondent is under criminal court orders, including
12 probation or parole, and the order is violated, this shall be deemed a violation of these probation
13 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

14 **2. Comply with the Board's Probation Program.** Respondent shall fully comply with
15 the conditions of the Probation Program established by the Board and cooperate with
16 representatives of the Board in its monitoring and investigation of the Respondent's compliance
17 with the Board's Probation Program. Respondent shall inform the Board in writing within no
18 more than 15 days of any address change and shall at all times maintain an active, current license
19 status with the Board, including during any period of suspension.

20 Upon successful completion of probation, Respondent's license shall be fully restored.

21 **3. Report in Person.** Respondent, during the period of probation, shall appear in
22 person at interviews/meetings as directed by the Board or its designated representatives.

23 **4. Residency, Practice, or Licensure Outside of State.** Periods of residency or
24 practice as a registered nurse outside of California shall not apply toward a reduction of this
25 probation time period. Respondent's probation is tolled, if and when she resides outside of
26 California. Respondent must provide written notice to the Board within 15 days of any change of
27 residency or practice outside the state, and within 30 days prior to re-establishing residency or
28 returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

5. **Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. **Employment Approval and Reporting Requirements.** Respondent shall obtain

1 prior approval from the Board before commencing or continuing any employment, paid or
2 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
3 performance evaluations and other employment related reports as a registered nurse upon request
4 of the Board.

5 Respondent shall provide a copy of this Decision to her employer and immediate
6 supervisors prior to commencement of any nursing or other health care related employment.

7 In addition to the above, Respondent shall notify the Board in writing within seventy-two
8 (72) hours after she obtains any nursing or other health care related employment. Respondent
9 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
10 separated, regardless of cause, from any nursing, or other health care related employment with a
11 full explanation of the circumstances surrounding the termination or separation.

12 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
13 Respondent's level of supervision and/or collaboration before commencing or continuing any
14 employment as a registered nurse, or education and training that includes patient care.

15 Respondent shall practice only under the direct supervision of a registered nurse in good
16 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
17 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
18 approved.

19 Respondent's level of supervision and/or collaboration may include, but is not limited to the
20 following:

21 (a) Maximum - The individual providing supervision and/or collaboration is present in
22 the patient care area or in any other work setting at all times.

23 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
24 care unit or in any other work setting at least half the hours Respondent works.

25 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
26 person communication with Respondent at least twice during each shift worked.

27 (d) Home Health Care - If Respondent is approved to work in the home health care
28 setting, the individual providing supervision and/or collaboration shall have person-to-person

1 communication with Respondent as required by the Board each work day. Respondent shall
2 maintain telephone or other telecommunication contact with the individual providing supervision
3 and/or collaboration as required by the Board during each work day. The individual providing
4 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
5 patients' homes visited by Respondent with or without Respondent present.

6 **9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any
7 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
8 or for an in-house nursing pool.

9 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
10 registered nursing supervision and other protections for home visits have been approved by the
11 Board. Respondent shall not work in any other registered nursing occupation where home visits
12 are required.

13 Respondent shall not work in any health care setting as a supervisor of registered nurses.
14 The Board may additionally restrict Respondent from supervising licensed vocational nurses
15 and/or unlicensed assistive personnel on a case-by-case basis.

16 Respondent shall not work as a faculty member in an approved school of nursing or as an
17 instructor in a Board approved continuing education program.

18 Respondent shall work only on a regularly assigned, identified and predetermined
19 worksite(s) and shall not work in a float capacity.

20 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
21 request documentation to determine whether there should be restrictions on the hours of work.

22 **10. Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
23 successfully complete a course(s) relevant to the practice of registered nursing no later than six
24 months prior to the end of her probationary term.

25 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
26 Respondent shall submit to the Board the original transcripts or certificates of completion for the
27 above required course(s). The Board shall return the original documents to Respondent after
28 photocopying them for its records.

1 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with its
2 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
3 amount of \$2,834.00. Respondent shall be permitted to pay these costs in a payment plan
4 approved by the Board, with payments to be completed no later than three months prior to the end
5 of the probation term.

6 If Respondent has not complied with this condition during the probationary term, and
7 Respondent has presented sufficient documentation of her good faith efforts to comply with this
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
9 extension of Respondent's probation period up to one year without further hearing in order to
10 comply with this condition. During the one year extension, all original conditions of probation
11 will apply.

12 **12. Violation of Probation.** If Respondent violates the conditions of her probation, the
13 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
14 and impose the stayed discipline (revocation/suspension) of Respondent's license.

15 If during the period of probation, an accusation or petition to revoke probation has been
16 filed against Respondent's license or the Attorney General's Office has been requested to prepare
17 an accusation or petition to revoke probation against Respondent's license, the probationary
18 period shall automatically be extended and shall not expire until the accusation or petition has
19 been acted upon by the Board.

20 **13. License Surrender.** During Respondent's term of probation, if she ceases practicing
21 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
22 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
23 Respondent's request and to exercise its discretion whether to grant the request, or to take any
24 other action deemed appropriate and reasonable under the circumstances, without further hearing.
25 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
26 subject to the conditions of probation.

27 Surrender of Respondent's license shall be considered a disciplinary action and shall
28 become a part of Respondent's license history with the Board. A registered nurse whose license

1 has been surrendered may petition the Board for reinstatement no sooner than the following
2 minimum periods from the effective date of the disciplinary decision:

3 (1) Two years for reinstatement of a license that was surrendered for any reason other
4 than a mental or physical illness; or

5 (2) One year for a license surrendered for a mental or physical illness.

6 14. **Mental Health Examination.** Respondent shall, within 45 days of the effective date
7 of this Decision, have a mental health examination including psychological testing as appropriate
8 to determine her capability to perform the duties of a registered nurse. The examination will be
9 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
10 the Board. The examining mental health practitioner will submit a written report of that
11 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
12 Recommendations for treatment, therapy or counseling made as a result of the mental health
13 examination will be instituted and followed by Respondent.

14 If Respondent is determined to be unable to practice safely as a registered nurse, the
15 licensed mental health care practitioner making this determination shall immediately notify the
16 Board and Respondent by telephone, and the Board shall request that the Attorney General's
17 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
18 practice and may not resume practice until notified by the Board. During this period of
19 suspension, Respondent shall not engage in any practice for which a license issued by the Board
20 is required, until the Board has notified Respondent that a mental health determination permits
21 Respondent to resume practice. This period of suspension will not apply to the reduction of this
22 probationary time period.

23 If Respondent fails to have the above assessment submitted to the Board within the 45-day
24 requirement, Respondent shall immediately cease practice and shall not resume practice until
25 notified by the Board. This period of suspension will not apply to the reduction of this
26 probationary time period. The Board may waive or postpone this suspension only if significant,
27 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
28 by Respondent to obtain the assessment, and a specific date for compliance must be provided.

1 Only one such waiver or extension may be permitted.

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Carey Caruso. I understand the stipulation and the effect it will
5 have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary
6 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
7 of the Board of Registered Nursing.

8
9 DATED: 9/25/12 Marilyn Eve Kleiner
10 MARILYN EVE KLEINER
11 Respondent

12 I have read and fully discussed with Respondent Marilyn Eve Kleiner the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15 DATED: 9-25-12 Carey Caruso
16 Attorney for Respondent

17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 9/25/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



ZACHARY T. FANSELOW
Deputy Attorney General
Attorneys for Complainant

LA2011504555
51163533.doc

Exhibit A

Accusation No. 2012-585

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RENE JUDKIEWICZ
Deputy Attorney General
4 State Bar No. 141773
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-585

13 **MARILYN EVE KLEINER**
950 N. Kings Road
14 Los Angeles, CA 90069

ACCUSATION

15 Registered Nurse License No. 299493

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about January 31, 1979, the Board of Registered Nursing (Board) issued
24 Registered Nurse License No. 299493 to Marilyn Eve Kleiner (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on November 30, 2012, unless renewed.

27 ///

28 ///

1

2

4

5

9

10

14

18

24

27

28

1

2

4

5

6.

9

13 -

14

15.

19

20

21

22

25

26

27

28

1

2

3

3

1 arrested.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Acts Involving Dishonesty, Fraud and/or Deceit)**

4 12. Respondent is subject to disciplinary action under sections 2750 and 2761,
5 subdivision (a), in conjunction with California Code of Regulations, title 16, section 1444,
6 subdivision (c), in that Respondent was convicted of crimes involving dishonest, fraud, and/or
7 deceitful acts. Complainant refers to, and by this reference incorporates, the allegations set forth
8 above in paragraph 11, subparagraphs (a) and (b), inclusive, as though set forth fully.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board issue a decision:

- 12 1. Revoking or suspending Registered Nurse License No. 299493, issued to Respondent
13 Marilyn Eve Kleiner;
- 14 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
15 enforcement of this case, pursuant to section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: April 2, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

22 LA2011504555
23 accusation.rtf
24 12/23/11-IC
25
26
27
28